IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 888 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)
Versus
MAGANBHAI L. MAKWANA - Respondent(s)

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Appearance :
MR ASHISH M DAGLI for Petitioner(s) : 1,
MR IS SUPEHIA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 14/12/2007

ORAL JUDGMENT

1. Heard learned Advocate Mr.AM Dagli for the petitioner and Mr. IS Supehia for the respondent workman.
2. By filing of this petition under Article 227 of the Constitution of India, the petitioner is challenging the order passed by the Tribunal in Approval Application NO. 203 of 2003 in Reference (IT) No. 37 of 2000 in order dated 17.11.2003 below Exh. 22 with a further prayer to allow the application as prayed for.
3. According to the corporation, the respondent was an employee working as a conductor. On 22.8.2000, respondent was on duty on the route from Gandhinagar to Juna Kandla and the bus was checked by the line checking staff wherein it was found that from 7 ½ passengers of different group from New Kandla to Port Colony and from 4 ½ passengers of different group going from new Kandla to Thermal, an amount of Rs.29.00 at the rate of Rs.2.50 were recovered towards fare but the tickets were not issued to them upto the point of checking and way bill was not closed. At the time of checking, four passengers in the bus were having tickets and 11 ½ passengers were not given tickets though amount of fare was recovered from them. In respect of the said charge, departmental inquiry was held against the conductor while following the principles of natural justice and thereafter by order dated 31.7.2001, it was ordered that an amount of Rs.500.00 be recovered as administrative expenditure by two equal installments. Thereafter, reviewing authority issued show cause notice to show cause as to why the punishment of dismissal should not be imposed. According to the petitioner, amount of Rs.500.00 recovered from the workman by two equal installments was ordered to be refunded. Reviewing authority has, after hearing the respondent, found that the order of punishment passed by the competent authority is liable to be quashed and, thereafter, order of dismissal

was passed imposing punishment of dismissal. Corporation has filed Approval Application No. 203 of 2003 under section 33-2-(b) of the ID Act, 1947 which was rejected by the tribunal on the ground that it amounts to imposing double punishment and the corporation has no power to enhance the punishment under the Discipline and Appeal Procedure Clause 9 and 20 and, therefore, in this petition, petitioner is challenging that order of the tribunal in Approval Application NO. 203 of 2003. Question of Reference being NO.1 of 2007 in Special Civil Application NO. 888 of 2004 has been decided by the Division Bench of this Court on 24.10.2007 and the Hon'ble Division Bench of this Court has answered the question referred to that the reviewing authority, as an appellate authority, has power to call for the papers of any case for review and these powers would include the powers to enhance the punishment in case if it is found tobe inadequate.

4. I have perused the review show cause notice as well as the order in review passed by the reviewing authority. Review show cause notice is at page 21 wherein the reviewing authority has come to the conclusion that the punishment imposed by the competent authority for the misconduct is inadequate or disproportionate and, therefore, review show cause notice was issued while considering the past record as to why respondent should not be dismissed from service. Reviewing authority has not come to the independent conclusion that the competent authority is wrong in imposing punishment on the workman. Reviewing authority has not discussed finding given by the competent authority but simply on the ground that the punishment imposed by the competent authority is disproportionate or inadequate and, therefore, review show cause notice was issued for enhancement thereof. Review show cause notice is dated 31st December, 2001. Respondent was personally heard on 10.4.2003. Thereafter, finding has been given by the reviewing authority. Reviewing authority has come to the conclusion that the charge levelled against the workman is proved and the workman

has committed the misconduct of dishonesty and misappropriation and cheating with the corporation and that will adversely affect the financial position of the corporation and, therefore, decision was taken for imposing punishment of dismissal against the workman. Thereafter, approval application as aforesaid was filed by the petitioner before the industrial tribunal. The industrial tribunal has considered the merits of the matter and thereafter, has rejected the approval application by denying to grant approval for the same which is under challenge in this petition.

5. Learned Advocate Mr. Dagli for the petitioner submitted that the reviewing authority was right in considering the gravity of misconduct and accordingly, punishment of dismissal was imposed by the reviewing authority. As per his submission, in doing so, no illegality was committed by the reviewing authority because charge against the workman was that of dishonesty and misappropriation and, therefore, reviewing authority has rightly exercised the powers of review. Except these submissions, no other submission was made by him and no decision was cited by him before this court in support of the submissions recorded here inabove.

6. On the other hand, learned advocate Mr.Supehia for the respondent workman has submitted that the appellate authority may have power to enhance the punishment but while reviewing the order of punishment of the competent authority and before enhancing the punishment imposed by the competent authority, certain principles must have to be observed by the reviewing authority which has not been done in the case before hand by the reviewing authority. As per his submission, merely because reviewing authority has got power to review and enhance the punishment, that itself would not be enough to justify the order of punishment passed by the reviewing authority. He submitted that the legal procedure has not been followed by the reviewing authority before passing the dismissal order against the workman. He submitted that the tribunal has rightly considered that the

reviewing authority has not properly appreciated the evidence led before the competent authority. Additional evidence was considered by the reviewing authority for reviewing and enhancing the punishment which was not forming part and parcel of the record of inquiry. As per his submission, reviewing authority cannot review the punishment order without any justification. He also submitted that before the reviewing authority, no other evidence was placed on record and, therefore, reviewing authority has passed punishment order contrary to the settled legal procedure. He also submitted that normally review show cause notice is to be issued within one year. In this case, more than one year had passed from the date of the order of punishment issued by the competent authority. He also submitted that the reviewing authority has not considered the defence of the workman which was taken into account by the competent authority. He also submits that in finding given by the reviewing authority, what was the oral evidence of the workman and what defence was given by the workman before the reviewing authority, that aspect has not at all been considered by the reviewing authority and no discussion has been made on that point. There is not a slightest finding given by the reviewing authority as to what was the defence of the workman and how it has been considered by the reviewing authority. Therefore, as per his submission, order of dismissal passed in review by the reviewing authority was not sustainable and the tribunal was right in rejecting the approval application of the corporation. He submits that it is the duty of the corporation to establish prima facie that the order of dismissal is proper on the basis of the record and corporation has to establish that the punishment of dismissal is not amounting to victimization or unfair labour practice according to the decision of the apex court**LALLA RAM VS. MANAGEMENT OF D.C.M. CHEMICAL WORKS LTD**, reported in **AIR 1978 SC 1004**. Therefore, he submitted that though the reference has been answered in favour of the corporation, on merits, it is necessary for the

corporation to establish prima facie case and justification for review. According to learned advocate Mr. Supehia for the petitioner, the reviewing authority has not been justified in reviewing the matter and imposing the punishment of dismissal and there is no fresh finding while differing with the finding given by the competent authority but on the basis of the same findings of the competent authority, reviewing authority has reviewed the order while enhancing the punishment and, therefore, order passed by the reviewing authority is bad in law and void ab initio and, therefore, tribunal was right in not granting approval to such void order. He also relied upon the decision of this court in SCA No. 5157 of 1999 dated 7th April, 2000 wherein this court has considered that before reviewing authority, if there is no additional evidence placed on record, then, on the basis of the same evidence, reviewing authority cannot differ with the finding given by the competent authority that the punishment is unjust. There must be some justification to impose higher punishment. Relevant discussion made in the said order dated 7th April, 2000 in SCA NO. 5157 of 1999 is reproduced as under:

" The petitioner corporation approached this Court against the judgement and award passed by the Industrial Tribunal, Bhavnagar in Reference (IT) No.171 of 1993 dated 31.7.1998. It is the case of the petitioner corporation that the respondent was initially imposed penalty of stoppage of two increments with future effect. Said order of penalty was taken in review and the reviewing authority had increased the said penalty to stoppage of four increments with future effect. The Industrial Tribunal while considering the said penalty imposed by the reviewing authority has substituted the penalty by reducing it to the stoppage of four increments but without future effect. The Industrial Tribunal mentioned that the reviewing authority did not have any additional evidence before it when it increased the penalty from stoppage of two increments with future effect to stoppage of four increments with future effect. The Industrial Tribunal was right to an extent in saying that, "the reviewing authority did not have any additional evidence before it for increasing the penalty". At the same time the Industrial Tribunal too did not have any material to reduce the penalty.

2. Looking to the facts and circumstances of the case and without accepting the contentions raised by Mr.Rathod for the respondent, who says that stoppage of

> one increment with future effect may be substituted; in fact there is no material on the basis of which the submission of Mr. Rathod can be accepted, but the fact that the reviewing authority did not have any additional evidence to increase penalty equally applies to the order of the Industrial Tribunal and therefore, the penalty initially imposed by the disciplinary authority is restored, i.e. stoppage of two increments with future effect. With the aforesaid modification in the judgement and award of the Industrial Tribunal, the petition is allowed with no order as to costs. The respondent workman will now be required to undergo the penalty of stoppage of two increments with future effect only. It goes without saying that the petitioner corporation will pay the dues to the respondent workman as early as possible, preferably within eight weeks from the date of receipt of writ of this Court."

7. I have considered the submissions made by the learned Advocate Mr.Dagli for petitioner and Mr. Supehia for the respondent. Considering the order passed by the industrial tribunal in an approval application no. 203 of 2003. I have also considered the matter in light of the finding given at page 17 by the competent authority while considering the defence of the workman that after the passengers got down from the bus, figure of passengers in the bus were noted and this incident occurred because of the short distance and tickets could not be issued by the conductor. Reporter, in cross examination, has supported the defence of the workman and there is clear finding given by the competent authority that there was no bad intention on the part of the workman to misappropriate the fund of the corporation. Whether the punishment of dismissal could be imposed by the reviewing authority on the basis of this finding of the competent authority is also a question since the reviewing authority has imposed the punishment of dismissal on the basis of same finding given by the competent authority. Considering this defence of the workman, two years service of the workman and also considering the fact that the bus was checked only within one km and the involvement of the amount of Rs.29.00 and also considering the fact that the passengers from Kandla area are known for making incorrect statement as emerging from the record, competent authority

has imposed punishment of fine of Rs.500.00 as administrative expenses while holding that there was no bad intention on the part of the workman to misappropriate the fund of the corporation. Now these findings of the competent authority are remaining in tact and not disturbed or differed by the reviewing authority. Merely an order of punishment imposed by the competent authority has been replaced by the order of dismissal. According to my opinion, said findings of the competent authority are required to be reassessed by the reviewing authority or he should have to differ with such finding for imposing higher punishment or enhancing the punishment on the basis of the fresh evidence after giving reasonable opportunity of rebutting fresh evidence to the workman if such fresh evidence is not forming part and parcel of the papers of inquiry as considered by the inquiry officer. In the case before hand, in finding at page 24 given by the reviewing authority, he has not at all discussed what evidence of the workman and what defence has been taken by the workman and what defence has been considered or not considered by the reviewing authority. He simply came to the conclusion that this misconduct is relating to dishonesty and misappropriation which will adversely affect the financial condition of the corporation and based upon such conclusion, reviewing authority enhanced the punishment by passing the order of dismissal against the workman. Therefore, according to my opinion, order of the reviewing authority was not tenable in law and was contrary to the procedure prescribed in law and, therefore, tribunal was right in rejecting the approval application of the petitioner. According to my opinion, these powers of review are not to be exercised in a mechanical manner. Reviewing authority has not considered the evidence of the workman and has also not differed with the finding given by the competent authority that there was no bad intention on the part of the workman to misappropriate the fund of the corporation but merely replaced order of punishment passed by

the competent authority without disturbing the finding of the competent authority and that is the basic error committed by the reviewing authority while passing the order of punishment in review proceedings and, therefore, tribunal has rightly refused to grant approval. Tribunal was right in coming to the conclusion that before passing the order of dismissal, reviewing authority was not having additional evidence before it and the order of enhancement of punishment was passed by the reviewing authority without any reason and justification. The Tribunal was right in holding that the corporation has not proved prima facie case against the respondent and was therefore right in rejecting the approval application while considering the undisturbed finding given by the competent authority that there was no bad intention on the part of the workman to misappropriate the fund of the corporation. Question of power of reviewing authority has been decided by the division bench of this court as stated earlier and, therefore, considering the merits of the matter, according to my opinion, tribunal has rightly rejected the approval application on merits and in doing so, no irregularity has been committed by the tribunal.

8. Learned Advocate Mr. AM Dagli has not been able to point out before this court that the findings given by the tribunal are contrary to record or that any irregularity has been committed by the tribunal. He was also not able to point out any jurisdictional error committed by the tribunal. He was also not able to point out that mere order of punishment was not replaced by the reviewing authority but findings were also replaced or the reviewing authority has, while differing with such finding, passed the order of punishment.

9. In this petition, certain legal questions have arisen which are necessary to be examined. Considering the result of the reference No. 1 of 2007 dated 20.10.2007, reviewing authority has authority and power to enhance the punishment but subsequent question is, whether while

enhancing the punishment, reviewing authority has followed the legal procedure or not and whether reasonable opportunity was given to the workman or not and not to give finding by the reviewing authority while differing with the competent authority,in respect of the punishment, not to consider or discuss or giving reason that the defence of the workman is not accepted by the reviewing authority that how the competent authority is wrong in imposing particular punishment. Therefore, while comparing reviewing proceedings with the disciplinary proceedings, where inquiry officer has exonerated employee and disciplinary authority is not agreeing with the finding given by the inquiry officer and differing, then, he should have to give finding of differing or disagreeing with the finding of the inquiry officer to the delinquent employee before issuing show cause notice for review of the punishment imposed by the competent authority. Reviewing authority must communicate differ finding with the competent authority to the delinquent workman. During the pendency of appeal against the punishment, no decision to review is to be taken, otherwise, it is bad. No additional material is to be taken into account by the reviewing authority. These are the basic principles which has been taken into account by this court while deciding the present petition.

10. In this petition, the review authority has not followed legal procedure and differ finding has not been given to the workman and no reasoning has been given by the reviewing authority that on what basis punishment imposed by the competent authority is found to be inadequate or insufficient.

11. In case of Babban Ram v/s. UCO Bank & Ors. Reported in 2005 II CLR 449 Cal, it has been observed by the Calcutta High Court in the Head Note I as under:

> **"I. Disciplinary Proceedings** : Petitioner employee exonerated in the enquiry of charges against him – Reviewing authority suo motu issued show cause notice – Then

passed order of penalty, lowering basic pay of petitioner by two stages for two yers, with no increments during that period – Impugned order of penalty challenged – Held that infringement of fundamental principles of natural justice impermissible – State action or executive action – no discrimination for want of fair play – Bias – not to prevail after any decision – Reviewing authority virtually exercised powers of appellate authority – Constitution of India, 1950, Arts. 14,16, 21, 226."

12. Thereafter, in para 16 and 23 of the same decision, it has been observed by the Calcutta High Court as under:

"If I am right in my finding already recorded,then, I must accept the contention of counsel for the petitioner that the power was wrongly exercised by the second respondent. From the provisions of amended regulation 18, it is clear that he could impose the penalty only if new material or evidence, which would not be produced by the bank previously, were produced before him. Admittedly, this is not the basis on which he proceeded. He proceeded on the basis that on the evidence on record the decision of the disciplinary authority was wrong; virtually he exercised the power of the appellate authority.

17 to 22 : xxx

23. That was a case regarding charge sheet and I am inclined to agree with counsel for the respondents that will not be an authority for deciding the issue raised in this case. Here the

notice was issued by the reviewing authority after forming the tentative opinion that the petitioner should be punished. So, he was necessarily required to say what penalty he proposed to impose; I would say that the action rather showed his open mindedness. However, nothing turns on this point, since I have already found that the impugned order cannot be sustained."

13. In case of **Ranjit Singh v. Union of India reported in 2006 AIR SCW 2177**, it has been observed by the apex court in Head Note A and para 20, 21 and 22 as under:

"20. In Punjab National Bank and Others v. Kunj Behari Misra [(1998) 7 SCC 84], this Court has clearly held that the principles of natural justice are required to be complied with by the Disciplinary Authority in the event he intends to differ with the findings of the Enquiry Officer observing:

"The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade

the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity tothe officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

21.The said decision has been followed by this Court in State Bank of India and Others v. K.P. Narayanan Kutty [(2003) 2 SCC 447], wherein it was clearly held that in such an event the prejudice doctrine would not be applicable stating:

"6. In para 19 of the judgment in Punjab National Bank case extracted above, when it is clearly stated that the principles of natural justice have to be read into Regulation 7(2) [Rule 50(3)(ii) of the State Bank of India (Supervising Staff) Service Rules, is identical in terms applicable to the present case] and the delinquent officer will have to be given an opportunity to persue the disciplinary authority to accept the favourable conclusion of the enquiry officer, we find it difficult to accept the contention advanced on behalf of the appellants that unless it is shown that some prejudice was caused to the respondent, the order of dismissal could not be set aside by the High Court."

22.In view of the aforementioned decisions of this Court, it is now

well settled that the principles of natural justice were required to be complied with by the Disciplinary Authority. He was also required to apply his mind to the materials on record. The Enquiry Officer arrived at findings which were in favour of the Appellant. Such findings were required to be over turned by the Disciplinary Authority. It is in that view of the matter, the power sought to be exercised by the Disciplinary Authority, although not as that of an appellate authority, but akin thereto. The inquiry report was in favour of the Appellant but the Disciplinary Authority proposed to differ with such conclusions and, thus, apart from complying with the principles of natural justice it was obligatory on his part, in absence of any show cause filed by the Appellant, to analyse the materials on records afresh. It was all the more necessary because even the CBI, after a thorough investigation in the matter, did not find any case against the Appellant and thus, filed a closure report. It is, therefore, not a case where the Appellant was exonerated by a criminal court after a full fledged trial by giving benefit of doubt. It was also not a case where the Appellant could be held guilty in the disciplinary proceedings applying the standard of proof as preponderance of the probability as contrasted with the standard of proof in a criminal trial, i.e., proof beyond all reasonable doubt. When a final form was filed in favour of the Appellant,

> the CBI even did not find a prima facie case against him. The Disciplinary Authority in the aforementioned peculiar situation was obligated to apply his mind on the materials brought on record by the parties in the light of the findings arrived at by the Inquiry Officer. He should not have relied only on the reasons disclosed by him in his show cause notice which, it will bear repetition to state, was only tentative in nature. As the Appellate Authority in arriving at his finding, laid emphasis on the fact that the Appellant has not filed any objection to the show cause notice; ordinarily, this Court would not have exercised its power of judicial review in such a matter, but the case in hands appears to be an exceptional one as the Appellant was exonerated by the Inquiry Officer. He filed a show cause but, albeit after some time the said cause was available with the Disciplinary Authority before he issued the order of dismissal. Even if he had prepared the order of dismissal, he could have considered the show cause as it did not leave his office by then. The expression "communication" in respect of an order of dismissal or removal from service would mean that the same is served upon the delinquent officer. [See State of Punjab vs. Amar Singh Harika, AIR 1966 SC 1313]"

14. In the matter of **S. Goparam v. Inspector General Central Industrial Security Force, South West Sector Mumbai and others reported in 2006 4 MLJ 274,** Division Bench of Madras

High Court observed as under in para 10:

> “10. Coming to the second contention, we have already extracted the conclusion of the Disciplinary Authority holding that the only charge levelled against the petitioner has not been proved, in such circumstances, we are of the view that there is no question of imposing punishment either leniently or moderately. Even if the second respondent or any other authority having jurisdiction wants to impose a higher punishment before setting at motion any of their proceedings in that regard, the petitioner must be afforded an opportunity with reference to the same by way of show cause notice. Here in the show cause notice issued by the second respondent, the only reason made (that is available at page 59 of the typed set) is that the punishment imposed by the Disciplinary authority is lenient and is not commensurate to the gravity of the offence committed by the petitioner. The same proceeds as if the Disciplinary Authority has accepted the finding of the Enquiry Officer, took a lenient view and imposed a lesser punishment.In the absence of any reason based on which the second respondent differed from the decision of the Disciplinary Authority, the show cause notice, dated 14.3.2001, which speaks only about 'lesser punishment' cannot be held to be a valid notice in the eye of law. As rightly pointed out, the second respondent failed to appreciate that the finding was in favour of the petitioner and the charge was not proved and that punishment cannot be enhanced merely because the charge is serious.

> Punishment can only be imposed on the basis of the material evidence in support of the charge and inasmuch as the finding of the Disciplinary Authority clearly states that the charge is not proved, we are of the view that enhancement of the punishment by the second respondent cannot be accepted. IN view of the above infirmities, in the order of the second respondent, the subsequent order of the first respondent, proposing to enhance the punishment to that of dismissal from service, cannot be sustained."

15. In case of **Lav Nigam v. Chairman & MD ITI Ltd. And another reported in 2006 SCC L/S 1835**, the apex court has observed as under in para 10,11 and 12:

> "10. The conclusion of the High Court was contrary to the consistent view taken by this court that in case the disciplinary authority differs with the view taken by the inquiry officer, he is bound to give a notice setting out his tentative conclusions to the appellant. It is only after hearing the appellant that the disciplinary authority would at all arrive at a final finding of guilt. Thereafter, the employee would again have to be served with a notice relating to the punishment proposed.
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> 11. In Punjab National Bank v. Kunj Behari Misra [(1998) 7 SCC 84:1998 SCC (L&S)1783], a bench of this court considered Regulation 7(2) of the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977. The Regulation itself did not provide for the giving of any notice before the disciplinary authority differed

with the view of the enquiry officer. This Court held; (SCC p.97,para 19)
“The result of the aforesaid discussion would be that the principles of natural justice have tobe read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry officer on any article of charge, then, before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its finding will have tobe conveyed and the delinquent oficer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charge framed against the officer.”

12.This view has been reiterated in Yoginath D.Bagde v. State of Maharashtra[(1999) 7 SCC 739:1999 SCC (L&S) 1385]. In this case also, Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 did not specifically provide for a disciplinary authority to give an opportunity of hearing to the delinquent officer

before differing with the view of the enquiry officer. The court said; (SCC p. 758 para 29).

“But the requirement of 'hearing' in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before the disciplinary authority finally disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority at the same time has to communicate to the delinquent officer the 'TENTATIVE' reasons for disagreeing with the findings of the enquiry authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of 'not guilty' already recorded by the enquiring authority was not liable to be interfered with. “

16. In case of **Mathura Prasad v. Union of India & Ors. Reported in 2006 AIR SCW 6277**, the apex court observed as under in para 17, 18 and 19:

“17.The Inquiry Officer in his first report might not have specifically recorded his findings with reference to each of the charges levelled against Appellant but he arrived at a finding on analysis of the materials on record. If he was to differ with

the said findings on the basis of any fresh materials, he was enjoined with a duty to grant another opportunity of hearing to Appellant.

18. Even if the Inquiry Officer had, in his first report, proceeded on surmises and conjectures as was observed by the High Court, the disciplinary authority could disagree with the said finding but it was, therefor, required to record its reasons. No reason was recorded. Sub-Rules (2) and (3) of Rule 10 aim at achieving the same purpose. If sufficient materials are not available on record, a direction for holding a further inquiry may be issued in terms of sub-Rule (2) of Rule 10 so as to enable the department to lead further evidence before him. For the said purpose also, reasons are required to be recorded by the disciplinary authority. An opportunity of hearing to the delinquent officer is required to be given. However, in the event, the disciplinary authority comes to the conclusion that the conclusion arrived at by the Inquiry Officer on the basis of materials placed by the parties are incorrect, he may disagree with the said findings but even, therefor, he is required to record reasons in support thereof. The requirement of sub-Rule (2) or sub-Rule (3) having not been complied with, the Inquiry Officer could not have arrived at a different finding. The High Court unfortunately did not consider this aspect of the matter.

19. When an employee, by reason of an alleged act of misconduct, is sought to be deprived of his

livelihood, the procedures laid down under sub-Rules are required to be strictly followed. It is now well settled that a judicial review would lie even if there is an error of law apparent on the face of the record. If statutory authority uses its power in a manner not provided for in the statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may attract the principles of judicial review."

17. In case of Suresh C. Shah v. Food Corporation of India, & Anr. Reported in 2007 I CLR page 880, it has been observed by this Court as under in para 14:

"14. Reading the above Regulation, it is very clear that powers of review are only with the Corporation, and not with the disciplinary authority. Even clause (c) provides that reviewing authority can remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper. Under the proviso to the said Regulation it is also provided that no order imposing or enhancing any penalty shall be made by the reviewing authority unless the employee concerned has been given a reasonable opportunity of making a representation against the penalty proposed. The said Regulation also provides that no proceeding for review shall be commenced until after the expiry of the period of limitation for an appeal or disposal of the appeal where such appeal has been preferred, meaning thereby that when the appeal is pending, even the Corporation also cannot review the original order, and it is also clear from the said Regulation that review is to be dealt with in the same manner as if it were an appeal under these regulations. Reading the afore said Regulation, it is even otherwise clear that even the reviewing authority which has the power to review cannot review the order when an appeal is pending and even the reviewing authority which is empowered to review

cannot enhance the penalty without giving reasonable opportunity. In the circumstances even if the Corporation itself has passed an order enhancing penalty, that order would be also bad if the same was passed without giving reasonable opportunity to the delinquent / employee concerned and even that could not have been done when an appeal was pending. As against that, in the instant case, in a proceedings initiated for imposing minor penalty, the very same authority, which was disciplinary authority, has reviewed its own order and awarded a major penalty during the pendency of the appeal and that too without giving any notice or opportunity to the delinquent employee. In that view of the matter, the only conclusion which can be reached is that the order of the disciplinary authority enhancing the penalty is passed without any authority of law, and contrary to the Regulations, and, therefore, the same is not sustainable. "

18. In BJ Jadav v. State of Gujarat reported in [2005] 9 GHJ (659), the observations made by this Court in para 20 of the judgment, as reported in the head note are reproduced as under:

"In view of the above discussion, I find that the Government gravely erred in law in passing the impugned order of penalty against the petitioner without supplying a copy of the advice of GPSC and taking the same into consideration and thereby denying the petitioner the opportunity to meet with the issues arising therein. I find considerable force in the submission of the learned advocate for the petitioner that under somewhat similar circumstances, a Division Bench of this Court had held that no valid order of punishment could have been passed on the Government servant who has not been supplied with a copy of the advice of the UPSC. I also agree with the contention of the learned advocate for the petitioner that the provisions in rule 10(4) of the said Rules are pari materia with the provisions of rule 15(4) of the CCS(CCA) Rules and the ratio of the decision of the Division Bench in the case of Bharat Sanchar Nigam Ltd. v. T.V. Patel (supra) and Union of

India v. Avinash Kumar Srivastava (supra) would be applicable to the present case."

19. In case of **State Bank of India and others versus KP Narayanan Kutty reported in 2003 (2) SCC 449**, it has been observed at the bottom of para 4 and para 6 as under:

> "4. xxx
> '19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the Enquiry Officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the Enquiry Officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

6.It was also contended on behalf of the appellants that the High Court committed an error in setting aside the order of dismissal when it was not shown that any prejudice was caused to the respondent by not giving an opportunity to him by the disciplinary authority. In this regard the learned counsel cited a decision of this Court in Union Bank of India v. Vishwa Mohan ((1998) 4 SCC 310). As already noticed above, before the High Court both the parties concentrated only on one point, namely, the effect of not providing an opportunity by the disciplinary authority when the disciplinary authority disagreed with some findings of the Enquiry Officer. It was also not shown by the appellants before the High Court that no prejudice was caused to the respondent in the absence of providing any opportunity by

the disciplinary authority. The aforementioned case of Vishwa Mohan is of no help to the appellants. The learned counsel invited our attention to para 9 of the said judgment. As is evident from the said paragraph this Court having regard to the facts of that case, taking note of the various acts of serious misconduct, found that no prejudice was caused to the delinquent officer. @page-SC1104 In para 19 of the judgment in Punjab National Bank case, extracted above, when it is clearly stated that the principles of natural justice have to be read into Regulation 7(2) (Rule 50(3)(ii) of State Bank of India (Supervising Staff) Service Rules, is identical in terms applicable to the present case) and the delinquent officer will have to be given an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the Enquiry Officer, we find it difficult to accept the contention advanced on behalf of the appellants that unless it is shown that some prejudice was caused to the respondent, the order of dismissal could not be set aside by the High Court."

20. In **Canara Bank & Ors. Swapan Kumar Pani & Anr., reported in AIR 2006 SC 1297**, it has been observed by the apex court in para 12 of the judgment as under:

> "12. The said Regulations have statutory force. An authority exercising such statutory power was required to act within the four corners thereof. He was bound by the limitations prescribed therein. Regulation 18 could have been applied in a case where the power of review is exercised in respect of a proceeding which has not attained finality. In this case, however, admittedly two charge-sheets were issued and at least in one of them the first respondent was exonerated. The said order attained finality. The second one was not pursued despite a report having been submitted by the Inquiry Officer evidently because of the first

> disciplinary proceeding. As the first respondent was exonerated there was no question of enhancement of punishment and in that view of the matter second part of Regulation 18 had also no application. As no order had been passed extending the time, evidently the power under Regulation 21 had also not been exercised. We may notice that the first respondent was exonerated by an order dated 29-3-1989 whereas the purported order of review was passed on 25-7-1995, i.e. after a period of 6 years, which was much beyond the period of limitation. The power was also not exercised within a reasonable time."

21. The Delhi High Court in case of **Sushila Sharma v. Pawan Sharma reported in 2007 II LLJ 865** has considered the power of judicial review of the High Court. Relevant observations are made in Para.11 and 12 which are quoted as under :

> "11. The settled position of law in respect of interference by the writ courts under Article 226 of the Constitution of India in matters of this nature is that a writ court exercises its powers of judicial review well within certain parameters. A series of judgments have been rendered by the Supreme Court in this context, as mentioned below:
> (i) Sadhu Ram Vs. Delhi Transport Corporation Learned AGP Mrs.Pathak requests for some time. Therefore, matter is adjourned to 3.12.2007. Ad-interim relief granted earlier to continue till then. 1984 Learned advocate Mr..... has filed leave note / sick note. Therefore, matter is adjourned to 24.7.2007. 1967.
>
> (ii) Harbans Lal Vs. Jag Mohan, , (1985) 4 SCC 333.

(iii) Calcutta Port Shramik Union Vs. Calcutta River Transport Association and Ors. 1988 (supp.) SCC 768.

(iv) Ramniklal N.Butta and another Vs.State of Maharashtra and others, (1997) 1 SCC 134.

(v) Indian Overseas Bank Vs. I.O.B.Staff Canteen Workers' Union and Anr. Learned AGP Mrs.Pathak requests for some time. Therefore, matter is adjourned to 3.12.2007. Ad-interim relief granted earlier to continue till then.
2000 Learned advocate Mr..... has filed leave note / sick note. Therefore, matter is adjourned to 24.7.2007. 1508.

(vi) Master Marine Services (P) Ltd. Vs. Metcalfe and Hodgkinson (P) Ltd. and Anr. , (2005) 6 SCC 138.

12. All the above judgments, if read collectively, clearly indicate that the High Courts should not interfere with the awards of the Industrial Tribunal or the Labour Court on mere technicalities. Interference is permissible only if the order of the Subordinate Court suffers from an error of jurisdiction, breach of principles of natural justice or is vitiated by a manifest or apparent error of law. Reappraisal of evidence without sufficient reason in law to arrive at a finding of fact contrary to those arrived at by the Subordinate Court is not the intent of exercising judicial review. It is only in cases where overwhelming public interest requires interference and cases of the nature where there is an error of jurisdiction or law as referred to hereinabove, should the court interfere, particularly in view of the fact that the object of

> enacting Industrial Disputes Act and of making a provision therein to refer disputes to tribunals for settlement, is to bring about industrial peace and in all such cases, an attempt should be made by the courts in exercise of their powers of judicial review, to sustain as far as possible, the awards made by the Industrial Tribunals and Labour Courts, instead of picking holes in the awards on rival points and frustrating the entire adjudication process."

22. Therefore, considering the limited jurisdiction of this court as per the aforesaid decision of the apex court and also in view of the facts of this case, according to my opinion, tribunal has rightly rejected the approval application on merits and in doing so, according to my opinion, no error has been committed by the tribunal requiring interference of this court under Article 227 of the Constitution of India as the reviewing authority was not justified in passing the order of dismissal against the workman and, therefore, there is no substance in this petition and same is, therefore, required to be dismissed.

23. Accordingly this petition is dismissed. Notice is discharged. No order as to costs.

(H.K. Rathod,J.)

Vyas